

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

ORDER
13-CR-386 (RRM)

CHOUDRY KHALIL,

Defendant.

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ROSLYNN R. MAUSKOPF, United States District Judge.

In preparing the Court's draft jury instructions in preparation for a charge conference, another *Apprendi* issue has surfaced relating to the series of counts under 18 U.S.C. § 1028.

These counts (Six, Seven and Eight) focus on the transfer and conspiracy to transfer both a fraudulent UK passport and UK driver's license. The conspiracy count (Count Six) does not specify the document(s) at issue, but pleads as one of the penalty provisions 18 U.S.C. § 1028(b)(1)(A)(ii), the 15-year maximum penalty for transfer of a document that appears to be a driver's license.¹ Count Seven pleads the substantive crime of transferring a false identification document, specifically a false UK passport. It is subject to the five-year statutory maximum pursuant to 18 U.S.C. § (b)(2)(A) as the government references in the indictment. Count Eight, another substantive count, pertains both to a false UK passport *and* a false UK driver's license, yet references as the applicable penalty section (b)(2)(A) – the five-year maximum.

Thus, Counts Six and Eight appear to raise two issues. First, it is unclear whether the government is seeking an enhanced penalty as to one or more of these counts. And second, if so, there appears to be an *Apprendi* issue requiring the jury to specifically find, at least as to Counts

¹ Count Six also references subdivision (f) which states that a conspiracy to commit a crime under this section shall carry the same penalties as those prescribed for the offense.

Six and Eight, that a driver's license was at least one of the false identification documents underlying any finding of guilty.

The parties shall provide their respective positions on this issue by letter no later than 9:00 a.m. on Monday, April 27, and provide revised proposed jury instructions for these counts if appropriate.

The government is also reminded that the Court directed preparation of a revised Verdict Sheet incorporating previous *Apprendi* issues. That revised Verdict Sheet, to incorporate any revisions required pursuant to this Order, shall also be filed by 9:00 a.m. on Monday, April 27.

SO ORDERED.

Roslynn R. Mauskopf

Dated: Brooklyn, New York
April 25, 2015

ROSLYNN R. MAUSKOPF
United States District Judge